S.B.CIVIL WRIT PETITION NO.6680/2006

M/s Gyanesh Buildings
v.
State of Rajasthan & Anr.

Date of Order :: 11th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.P.Joshi, for the petitioner.
Mr. B.S.Charan, for the respondents.

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By an order dated 18.8.2006, passed by the Commissioner, Municipal Council, Udaipur, the petitioner, a partnership firm, received sanction to raise construction at 25, Residency Scheme, with following conditions:-

"(1)सेट बैक्स सामने रास्ते की ओर 12" -0" (बारह फीट) व साईड में 5"-0" (पॉच फीट) तथा पीछे 5"-0" (पॉच फीट) सेट बेक्स छोड़ते हुसे निर्माण करे।
(2)बेसमेन्ट की ऊंचाई सड़क लेवल से 1-2 मीटर ऊंचा रखे।
(3)भूतल की ऊंचाई 12"-0" (बारह फीट) प्रथम तल की ऊंचाई 11"-0" (ग्यारह फीट) द्वितीय तल की ऊंचाई 10"-0" (दस फीट) रखे।
(4)तारछ फलश की बनावें जिसका सैप्फ्टीक टैंक व सोक फिट अपने ही अन्दर बनावें।
(5) सभी किवाड़ अन्दर की ओर खुलते हुऐ रखे।
(6) प्रत्येक नाल्दों के नल लगा ऊनका पानी मैन ड्रेन में मिलावें।
(7)निर्धारित मानदण्डों अनुसार अग्निशमन की व्यवस्था रखें।
(8)वर्षा के पानी को संरक्षित बाबत् टांके का निर्माण करावें।
(9)तल घर पार्किंग के ही काम में लेंवे। शपथ पत्र दिनांक

11.7.2006 पर पाबन्द रहे। तलघर नगर परिषद को समर्पित किया गया है। अत: तलघर का बेचान नहीं किया जावे।
(10)बालकोनी 3" -0" (तीन फीट) चौड़ी ही रखे।
(11)राज्य सरकार नगर परिषद की अधिसूचना, आदेश, भविष्य में भी निकले तो वो लागू होंगे।
(12)स्वामित्व सम्बंधित तथ्य अनुचित एवं गलत पाये जाने, न्यायालय में वाद विचाराधीन होने, स्वीकृति के विरूद्ध निर्माण होने पर दी गई स्वीकृति स्वत: ही निरस्तनीय मानी जाऐगी।
(13) उपरोक्त स्वीकृति एक वर्ष तक के लिये वैद्य होगी।"

Subsequent thereto, a notice dated 4.10.2006 under Section 170(ii)(b) of the Rajasthan Municipalities Act, 1959 was served upon the petitioner to get the construction demolished made at the site 25, Residency Scheme beyond the permission granted. The details given in the notice relating to unauthorised construction are as follows:-

"आप द्वारा मौके पर निरन्तर स्वीकृति विरूद्ध कार्य जारी रखते हुये मौके पर T.F. पर R.C.C. के पिल्लर खड़े कर शटरिंग कार्य करवा चुके है,व T.F. पर सरिये आदि लगाये जा रहे है।

नोट :- परिषद की भवन-निर्माण स्वीकृति शाखा:- द्वारा जबतक नियमानुसार निर्माण स्वीकृति जारी नहीं की जाती तब तक T.F. पर छत भराई का कार्य नहीं करें, अन्यथा परिषद द्वारा आपके विरूद्ध नियमानुसार कार्यवाही अम्ल में लाई जावेगी/ जिसकी समस्त/ जिम्मेदारी आप स्वयं की होगी-
सूचित हो-"

In response, the petitioner by a communication dated 10.10.2006 while pointing out construction raised by certain other builders beyond the permission granted made a request to compound the additional construction raised by it. A reference was also given about an application dated 27.9.2006 that was said to be submitted for compounding construction made in excess to the permission granted, however, the Municipal Council, Udaipur by its communication dated 9.10.2006 refused to compound the illegal construction, hence this petition for writ is preferred claiming a mandamus to regularise the additional floor constructed by the petitioner. The claim made is founded on following grounds:-

(1)the Rajasthan Municipalities (Compounding & Compromising of the Offences) Rules, 1966 (hereinafter referred to as “the Rules of 1966”) empowers Municipal Council to compound any construction raised beyond the permission granted and in the present case there was no reason available to Municipal Council, Udaipur for not compounding the construction raised by the petitioner beyond the permission granted;

(2)the Municipal Council, Udaipur in similar circumstances regularised construction of

additional floor in nearby buildings on payment of regularisation charges but no such discretion is exercised in favour of the petitioner and that is highly arbitrary, discriminatory and violative of Article 14 of the Constitution of India; and

(3)the petitioner constructed additional floor on a solemn assurance made by the Municipal Council, Udaipur for its regularisation after accepting required charges in accordance with the Rules of 1966 but the respondent Council did not choose to act upon its assurance and that is unjust and arbitrary.

Per contra, the stance of the respondent Municipal Council is that the petitioner intentionally, deliberately and with an intention to raise construction beyond the permission granted, not only constructed an additional floor but also acted in violation of conditions prescribed for raising construction relating to keep the set backs open. According to the respondents the permission was granted to the petitioner with a specific understanding that in the event of violation of any condition mentioned in the order dated 18.8.2006, the sanction accorded shall stand cancelled automatically. The petitioner deliberately raised third floor without

permission and also did not choose to keep open 12 feet open place infront that was necessary for regulating parking and traffic. The petitioner, as a matter of fact, even prior to 18.8.2006 raised certain constructions unauthorisedly and that was adversely effecting the parking system. According to the respondents number of notices were given to the petitioner to remove illegal construction made by it. The notices so granted are placed on record collectively as Anx.R/2/1. The respondent Municipal Council also denied the fact about compounding illegal constructions in any nearby building.

In rejoinder, the petitioner while reiterating whatever stated in the writ petition also referred certain instances wherein the Municipal Council, Udaipur compounded the constructions raised beyond the approval granted.

Heard counsel for the parties.

In precise, the question involved in this petition for writ is that whether the Rules of 1966 creates a right in favour of a person to get illegal construction made by him compounded and compromised.

Under the Act of 1959, Section 98 prescribes various duties of a Municipal Council and those are related to the local civic governance in municipal

area. A Municipal Council is duty bound to provide, promote and secure better living conditions of the residents of the municipal area by proper management of roads, streets, lightning, sewerage, scavenging, construction of buildings etc. It is also required to be checked by the Council that all the public amenities be adequately utilised by the residents. Chapter IX of the Act of 1959 provides various checks to maintain and regulate civil amenities. The violation of such checks are offences under the Act of 1959. The Rules of 1966 as a matter of fact are an exception and these are enacted with a view to compromise and compound unauthorised constructions those are not having adverse effect on public at large. The Government of Rajasthan made its intentions quite clear in this regard under a notification dated 7.1.1965 that reads as follows:-

> "[Circular No.F.7(187)LSG/58/651-951, dated 7.1.1965]
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> It has come to the notice of the Government that even cases of unauthorized constructions where such constructions are not according to the building bye-laws of the respective municipalities are compounded or compromised by the municipalities on filmsy grounds. In this connection the State Government have been pleased to direct that no cases of unauthorized construction need be compounded or compromised where such constructions are not according to the

> building bye-laws of the respective municipalities. The houses built up to now may be brought in conformity with the bye-laws as far as possible, and thereafter unauthorized constructions should not be allowed."

Thus, the Rules of 1966 are not meant to compound and compromise each and every offence committed by a builder. A broad discretion vests with the Municipal Council to compromise and compound or not to compromise and compound the acts offensive to the provisions of the Act of 1959. The criteria while exercising such discretion should always be that it may not harm larger public interest.

In the present case what reveals from the pleadings is that the petitioner started construction with an intention to commit offence. The permission for raising construction as required under Section 170 of the Act of 1959 was given to it on 18.8.2006, however, even prior to that the construction work was commenced and, therefore, in the months of April and July, 2006 several notices were given by the Municipal Council to the petitioner to stop such illegal construction. All those notices are available on record as Anx.R/2. From perusal of notices referred above it is apparent that the petitioner left 9.6 feet front set back instead of required place of 12 feet. The petitioner also raised certain pillars those were

creating problem in parking. It is also pertinent to note that the petitioner within a period of one month after getting permission to raise construction submitted an application for compounding the illegal constructions made by it. This fact clearly proves that from inception the petitioner was raising construction to go beyond the sanction granted with an object to get it compounded subsequently. I am of considered opinion that such kind of offender does not deserve any sympathy and favourable exercise of discretion by the Municipal Council under the Rules of 1966. From perusal of all the notices given by the Council to the petitioner, it is also apparent that the construction said to be made by the petitioner is causing harm to public at large. The Municipal Council, thus, rightly denied for entering into compromise and compounding the offence made by the petitioner.

The allegation of the petitioner that the Municipal Council in similar circumstances regularised construction of the additional floor in nearby buildings on payment of regularisation charges is also not well founded. The instances given by the petitioner in rejoinder relate to different localities. Beside that, every case under the Rules of 1966 is required to be examined by the Council at its own merits.

For the reasons given above, this petition for writ is having no merit and, therefore, the same is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.